Supreme Court, U.S.
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NO. 04-279

In the

Supreme Court of the United States

ANDREW MESSINA, JR.
AND D&G PRODUCTIONS, INC.

Petitioners,

v.

THE PARISH OF ST. CHARLES,
THE ST. CHARLES PARISH COUNCIL,
GREG CHAMPAGNE, IN HIS CAPACITY AS THE
SHERIFF & EX-OFFICIO TAX COLLECTOR
FOR THE PARISH OF ST. CHARLES,
AND DEPUTY PAM SCHMITT

Respondents,

On Petition for a Writ of Certiorari to the Supreme Court of the State of Louisiana to Review the Decision of the Louisiana Fifth Circuit Court of Appeal Affirming the Grant of Summary Judgment by the 29th Judicial District Court Parish of St. Charles

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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REPLY ARGUMENT

Andrew Messina, Jr. and D&G Productions, Inc., Petitioners, offer the following reply to the Parish of St. Charles' ("Parish") Brief in Opposition for Respondent ("Brief").

A. The Parish's Own Video Recorded Council Meeting Clearly and Unequivolcally Showed That The Unconstitutional Ordinance Was Enacted Solely To Restraint Noise, Not Alcohol As the Parish Now Disingenuously Argues

Although the Ordinance addresses itself toward alcoholic beverage consumption, it is clear from the hearing transcript that: 1) the only comments and concerns involved noise; and, 2) the sole objective of the Parish was to eliminate the noise emanating from Messina's Oaks Plantation.

> Mr. Huey Long:
> We have a problem there that's just - - It's just unreal. I mean, **the noise factor coming from the facility** that's next to our residence is just unbelievable.[1]

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[1] Appendix A, Ordinance Hearing Transcript, 8/5/97, p. 5 (emphasis supplied).

* * *

Mr. Huey Long:
And in saying this, I mean, you're welcome, any weekend, to come and listen to what - - if y'all don't pass this ordinance, **to listen to the music and the loud sound** that we're getting in our neighborhood.[2]

* * *

Councilman Duhe:
Mr. Long, **the noise problem**, is it more when they're having a reception outdoors, or - -

Mr. Huey Long:
Yes.[3]

* * *

Mr. Huey Long:
But there is absolutely **no way that you can gear down music** in a tent. It's like playing outside in a yard. You have to play it much

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[2] Appendix A, Ordinance Hearing Transcript, 8/5/97, p. 7 (emphasis supplied).

[3] Appendix A, Ordinance Hearing Transcript, 8/5/97, p. 8 (emphasis supplied).

louder, because all the music escapes. And that's what's happening.[4]

* * *

Mr. Huey Long:
If it's not - - somebody doesn't govern or put a hand on something, **then it begins to get louder, and louder, and louder**. And we have to do something to **curtail the noise**, I mean, it's just - - It's just unbelievable, and it's uncalled for in a residential neighborhood.[5]

* * *

Mr. Ed Himel:
I moved into St. Charles Parish because it was such a nice and quiet parish, and moved in this neighborhood. And now you cannot enjoy your afternoons, or your Sundays, or whatever, in your back yard, **because the music's so loud** it's just like being at a reception. You have to talk over everybody

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[4] Appendix A, Ordinance Hearing Transcript, 8/5/97, p. 8 (emphasis supplied).

[5] Appendix A, Ordinance Hearing Transcript, 8/5/97, p. 9 (emphasis supplied).

so you can have common communication.[6]

* * *

Mr. James Waguespack, Sr.:
There are times when you sit at your table, and glasses and stuff will float on your table, and noise vibrating it, **that's how bad the noise is**, and I think that is - - there's something they can do for it.[7]

* * *

Councilman Ramchandran:
They want to make sure that - - They like the restaurant. They want it to stay there and, at the same time, somehow **manage the noise**.[8]

* * *

Councilman Duhe:
Okay, Mr. Lassus, I'd still like you to

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6 Appendix A, Ordinance Hearing Transcript, 8/5/97, p. 19 (emphasis supplied).

7 Appendix A, Ordinance Hearing Transcript, 8/5/97, p. 20 (emphasis supplied).

8 Appendix A, Ordinance Hearing Transcript, 8/5/97, p. 21 (emphasis supplied).

explain this to me; how that's going to **restrict the sound problem, the noise problem**, that they have in that area?[9]

* * *

Councilman Johnson:
But what I want to ask is not necessarily against this, **but the whole deal is noise**. Now, if you remember, we'd been trying to get a noise ordinance for a long time, and we finally got one. Why does that - - Why is it that that doesn't work, does anybody know?[10]

Throughout its forty-one pages, the Ordinance Hearing Transcript reveals not one single comment by the neighbors nor one single question from the Council concerning alcoholic beverages being served outdoors by Messina's Oaks Plantation nor any other public intoxication concerns. The sole concern was noise.

The Parish's ill-conceived and unconstitutional noise restraint plans were unmasked by Councilman Johnson's simple question: Why not pass a noise ordinance? The Parish's attorney answered Councilman Johnson's question

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9 Appendix A, Ordinance Hearing Transcript, 8/5/97, p. 25 (emphasis supplied).

10 Appendix A, Ordinance Hearing Transcript, 8/5/97, p. 31 (emphasis supplied).

by explaining the painstaking measures that the Parish would need to employ for a "property-line" noise ordinance to survive constitutional scrutiny.

> Mr. Lewis:
> The reason it doesn't work is the noise ordinance that we have is very specific to the various - - the location. And then the one we passed, it was, like, the State law that just got passed that is location specific, too, it applies to automobiles. So we're going to get around, I think, maybe, Mr. Johnson, to a **noise ordinance** that will work in these instances, but as I told you before, **they have to be very carefully tailored or they're found unconstitutional**.
>
> * * *
>
> But one that would work in this instance would have to be crafted totally different. It would have to be what I would call a, or refer to as a **property line noise ordinance**, and would have to have some different enforcement provisions.
>
> * * *
>
> [T]hey have very detailed instructions on how to enforce it, and the officers have to have these decibel counters, and those kinds

> of things. So I - - We - - **The Sheriff's Office is not really crazy about getting into the decibel-counting business** and that kind of thing, **so we have to work around that somehow**, but we are still considering it.[11]

Remarkably, instead of going through the "decibel-counting" trouble of affording Messina its constitutionally protected rights under our First Amendment, the Parish's attorney[12] advised the Parish to "work around" the First Amendment by arbitrarily requiring Messina to obtain a permit to serve alcohol outdoors. To little surprise, upon application for the permit, the Parish denied Messina's request to serve alcohol outdoors.

The Parish's Brief gives little more than one page and cites no distinguishing authority to controvert the unhesitant holding of Newport v. Fact Concerts, Inc.; specifically, governments are forbidden from using arbitrary pretexts to violate an individual's First Amendment Right to Freedom of Expression. Newport v. Fact Concerts, Inc.,

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[11] Appendix A, Ordinance Hearing Transcript, 8/5/97, p. 31-32 (emphasis supplied).

[12] It is particularly remarkable that it was the Parish's attorney, an officer of the court sworn by oath to uphold and protect the Constitution, that recommended the disingenuous "working around" of the First Amendment.

626 F.2d 1060 (1st Cir. 1980), *rev'd on other grounds*, 453 U.S. 247 (1981). The Parish merely dismisses Newport by pointing out that the governmental action in Newport was not content neutral.

However, a government's failure to be content-neutral is only one way a government can violate the First Amendment. As the Parish's attorney was well aware, this Honorable Court has long established that a constitutional noise ordinance must be: 1) content-neutral, and 2) narrowly drawn to regulate the hours or places or use of loud-speakers, or the volume of sound (the decibels) to which they may be adjusted. Saia v. New York, 334 U.S. 558 (1948); Polaris Amphitheater Concerts, Inc. v. City of Westerville, 267 F.3d 503 (6th Cir. 2001).

The "pretextual" motive of the Council could not be any clearer - - concoct a reason for Messina's to require the Council's arbitrary approval, and then put unconstitutional "stipulations" on the applicant's Freedom of Expression throughout the approval process. This Honorable Court affirmed the constitutional rule of law that courts must look past arbitrary "pretextual" legislation. Newport v. Fact Concerts, Inc., 626 F.2d 1060 (1st Cir. 1980), *rev'd on other grounds*, 453 U.S. 247 (1981).

The record in this case rings much truer than the Parish's self-serving, misleading and disingenuous arguments. As in the Newport case, this Honorable Court should once again look beyond the Parish's illusory distraction of alcohol regulation. This Honorable Court

should find that the Parish used alcohol regulation as a pretext to abridge Messina's First Amendment Freedom of Expression because the "Sheriff's Office [was] not really crazy about getting into the decibel-counting business." For these reasons, the Petitioners respectfully request that this Honorable Court grant Petitioners' request for discretionary review.

B. Rational Basis Analysis is Not a Carte-Blanche License for the Parish to Arbitrarily Violate the First Amendment

The Parish's Brief would also have this Honorable Court believe that no inquiry can be made into the motive behind the passage of an ordinance if a rational basis can be found. The Parish cites to this Honorable Court's decision in FCC v. Beach Communications, Inc., 508 U.S. 307, 113 S. Ct. 2096 (1993). However, the FCC case is easily distinguishable on two grounds: 1) The Appellate Court imposed an obligation on the Respondents to produce a rational basis for the Court's review where no such rational basis could otherwise be found in the record; and, 2) The record in FCC contained no evidence whatsoever that our Congress enacted The Cable Communications Policy Act of 1984 as a mere pretext to abridge a targeted individual's Constitutionally protected rights.

The FCC decision simply holds that if no rational basis is articulated within a legislative act, courts are not empowered to question legislative authority by requiring some measure of empirical study or proof.

No such guess work is required here to conduct the inquiry into the Parish's true motive. The entire ordinance enacting council meeting was preserved by video tape recording. The video tape recording was transcribed and stipulated to by the parties at the trial level. Accordingly, not only was the council intent preserved, but every single word spoken by or before the council is contained throughout the attached Appendix. The record clearly shows that the true motive of the council is numerous and unequivocal - - conjure up some "rational basis" alcohol regulation so that the Parish can appease a few disgruntled residents by getting rid of a noise problem.

Simply put, our rights to Free Expression should never fall to the arbitrary whim of a few disgruntled citizens nor to the whim of elected officials. This Honorable Court has always required that constitutional noise ordinances must give a potential violator of criminal statutes some reasonable and measured (that "crazy" decibel-counting thing) basis to know if he or she is committing a criminal noise violation. For these pretextual reasons, the Parish's ordinance could never bear a rational basis to a compelling governmental interest. For these reasons and those set forth in the Petition, the Petitioners respectfully request that this Honorable Court GRANT the writ of *certiorari*.

RESPECTFULLY SUBMITTED,

DAVID C. CLEMENT

March 16, 2005

APPENDIX A

Page 1

29th JUDICIAL DISTRICT COURT
PARISH OF ST. CHARLES
STATE OF LOUISIANA
NO. 50-029 DIVISION "E"

MESSINA
V.
THE PARISH OF ST. CHARLES, ET AL

* * * * * *

Transcription of Audio-Videotape Excerpts of the St. Charles Parish Council Meetings of August 5, 1997, January 5, 1998, and February 2, 1998, by Heidi Schwab, CCR, OCR, CVR, Associated Reporters, Inc., Ste. 3811, 201 St. Charles Avenue, New Orleans, Louisiana, upon the request of Karina P. Gentinetta, Esq., of the law firm of Montgomery, Barnett, Brown, Read, Hammond & Mintz.

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August 5, 1997

* * *

CHAIRMAN CHAMPAGNE:

...meeting, Summary No. 4405, an Ordinance amending the Code of Ordinances, Sections 3 through 6, through the elimination of an existing exemption for Restaurants and regulations governing permitted outdoor areas where alcoholic beverages may be consumed.
Mr. Lassus? MR. LASSUS: Gentlemen, as you might be aware, there's a code provision in existence, at present, where a special permit is required for barrooms when an outdoor area is used for alcoholic beverage consumption. That
special permit is a no-fee permit which is issued to barrooms after a post-name and possible counsel-reviewperiod.Presently, restaurants and country clubs are exempt from that particular provision. It has come to light through a fairly dramatic example in Destrehan, that that situation, that being the exemption for

restaurants, may not be -may be subject to some concern and possible revision, and, as a result, we're offering this summary, 4405, which would remove the exemption for restaurants, and subject restaurants to this special permitting process If you'd like me to ver the permitting section in the code, as it exists, I will.

CHAIRMAN CHAMPAGNE:

You could go into it, Mr. Lassus.

MR. LASSUS:

Basically, the applicant shall file a no-fee permit application for said use with the Director of Planning and Zoning.The Department of Planning and Zoning shall post the applicant's property with notice of the permit request for five days. If no negative commentary is received on the application from any property owner within 500 feet of the
applicant's affected property - I think that's a special note that you should take, is that only within 500 feet of the applicant's property can comment - the

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Director may approve the application with stated reasons. Should a negative comment be received from eligible property owners, the permit application shall be forwarded to the Council's secretary for timely consideration by the Parish Council. Also, should the Director disapprove the application in the absence of negative comment, the applicant may appeal that negative decision to the Council for consideration. Barrooms which are immediately adjacent to residentially-owned property shall not be eligible for the application. If you have any questions, Ill be glad to answer them.

CHAIRMAN CHAMPAGNE:

We'll get into the questions after the public hearing. We'll now have Public Hearing Summary No. 4405. Anyone wishing to address the Council, please come forward.
Please state your name and address for the record.

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MR. LONG:

Huey P. Long, 131 Murray Hill Drive, in Destrehan.

CHAIRMAN CHAMPAGNE:

I though there was only one of him.

MR. LONG:

The last I'm the last of the Kingfish. (Laughter)

MR. LONG:

I think most of you have received a copy of the petition that we, the concerned residents in that area of Murray Hill Drive in the upper part of Ormond Oaks, have circulated and signed. We have a problem there that's just -It's just unreal. I mean, the noise factor coming from the facility that's next to our residence is just unbelievable. I think this ordinance that, that hopefully, that everyone will approve tonight, will help us and also keep this from happening in another area in this parish.

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You know, as our parish moves forward - and it will - I think it's very important that we preserve and protect the residential areas that we have now. Using Murray Hill Drive, for example, it's forty years old, or maybe a little older. About 35% of the people in that area now are retired. It's still a well-kept subdivision. These are the kind of advertisement things that we need for this parish, in order for people that eventually, as the older people move out, the younger people will continue to move into this parish and want to live here.Now, you know, if -The bad

publicity, and y'all know that as well as I do, travels a lot faster than anything good that anyone does or tries to do to make this parish better. I know all of y'all, you know, y'all don't have an easy job. Everybody, you know, you get a lot of criticism, and everything, for some of the decisions you make.

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But the thing that you should do is think what would happen if 'I' was in the position of that particular individual, individual or group of people, living in an area that wanted to just live there, and retire, and enjoy themselves, and then begin to get something that was really disrupting to the whole neighborhood. You should take in consideration and always cast your vote, and it's not easy to do, cast your vote for what -the majority of the people and the good of St. Charles Parish. And in saying this, I mean, you're welcome, any weekend, to come and listen to what -if y'all don't pass this ordinance, to listen to the music and the loud sound that we're getting in out neighborhood. I and all the residents in that area, we hope that tonight that you will really support this thing fully, so that everybody understands that you people and the people of St. Charles Parish are

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demanding that we're going to have residential areas that we can relax and enjoy things, for our family. Thank you. Dick?

CHAIRMAN CHAMPAGNE:

Thank you, Mr. Long.

Mr. Duhe?

MR. DUHE:

Mr. Long, the noise problem, is it more when they're have a reception outdoors, or--

MR. LONG:

Yes.

MR. DUHE:

-and there's a band? How about when they're having a reception indoors and there's a band?

MR. LONG:

No, they have an outside area that has a -it's a tent. Very few reception halls that you -you know, that I've been in, would operate in a tent on the outside. And you know, I don't want to be a negative person. We want as much industry

as we can, and bear these places to come in this parish. But there is absolutely no way that you can gear down music in a tent. It's like playing outside in a yard. You have to play it much louder, because all the music escapes. And that's what's happening.

MR. DUHE:

How about when a reception's held indoors, in that a problem with the neighbors?

MR. LONG:

They don't -I don't know of any--They don't have the room inside to have a wedding reception on the inside. It's started off now, sometimes it's on Friday, two times on Saturday, and sometimes on Sunday. It's beginning to -And, of course, as any law that's not passed, it begins to become more and more of a problem. If it's not -somebody doesn't govern or put a hand on something, then it begins to get louder, and louder, and louder. And we have to do something to

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curtail the noise, I mean, it's just -It's just unbelievable, and it's uncalled for in a residential neighborhood.

MR. DUHE:

One more question, then. Some of the receptions, they go late into the night?

MR. LONG:

I have made phone calls, you know, trying to get along. We will -You know, again, I want to try to be a good neighbor to anyone I'm next to. Sometimes they run past 11:00 o'clock. If I call, bang! They quit. And it's, just, I don't have the time, and I'm sure y'all don't have the time to call and police this thing. It should have some kind of law guiding them on what they are to do, and they have to abide by it.
Any other questions? (NO RESPONSE)

CHAIRMAN CHAMPAGNE:

Thank you, Mr. Long. Thank you.

MR. LONG:

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All right.

CHAIRMAN CHAMPAGNE:

Anyone else wishing to comment on Summary No. 4405? Please step forward. Please state your name.

MR. SIRMON:

Lou Sirmon, 326 Baupre, Luling. I'm
here representing The Cajuns. The noise ordinance -I want to back up a second. We, at The Cajuns, have a deck that we use for lunchtime, during -when weather permits and it's not too hot, and, also, for the afternoon for the lounge area, our permitting of alcohol or non-alcoholic beverages, and we built the deck in '94,when we went to Mr. Lassus and the Planning Committee. And, subsequently, and I said '94, around '94, I think Mr. Duhe and Mr. Tregre, I was on their committee - correct me if I'm wrong - we did some investigating into some alcoholic beverages ordinances, and everything, and part of this recommendation that's here now that the Council is

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addressing, addressed that in that committee. And that's why, I guess, country clubs and restaurants were excluded. And I do

know that it is a problem, and I can understand what he's saying. I have a question I might like to address to Mr. Lassus. How many restuarants in St. Charles Parish border a residential area that, you know, this could affect? Is

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it just affecting mine and the other one across the river, or do we have several other restaurants like that throughout the parish? I don't know. I'm just asking the question.

MR. LASSUS:

Offhand, I'm not familiar with any others than those two.

MR. SIRMON:

Okay, well, I think, you know, before you make a decision like this, I think you really need to look into all the other things. That was the question I'd like to know; how many other people does it affect, and what effect does it have on my little place, The Cajuns, in Luling, if this goes into effect? We don't have parties, or -We've had inside weddings, but we haven't had anything on the grounds. We don't have the grounds that are as beautiful as the one across the river that you're talking about, particularly.

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But that's the only reason I came here and addressed y'all; because I have some concerns about it. We've complied with all of the rules in building the deck, and everything else, with St. Charles Parish, and now they come in afterwards, after we have spent money and done some things to promote the business. Then my only alternative would be to enclose the deck, and, right

now, I really wouldn't want to go to that expense. Anybody have any questions?(NO RESPONSE)

CHAIRMAN CHAMPAGNE:

Thank you, sir.

MR. SIRMON:

Thank you.

CHAIRMAN CHAMPAGNE:

Anyone else wishing to comment on Summary No. 4405?

MS. VIAL:

Debby Dufrene Vial, 135 Lakewood Drive, Luling, representing Esperanza Restaurant, on River Road, in Luling. I read through the ordinance that

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the Council has this evening, and I just had a few things that I wanted to, maybe, bring up for consideration by the Council members before approving this ordinance. The -I certainly emphasize with the residents. Their concerns are very legitimate. Based on the comments that were made this evening, most of them are addressed toward the noise, which is a factor, I think, that is being needed to be addressed in conjunction with this particular ordinance regarding the consumption of alcoholic beverages in outdoor areas. Currently, the changes that I noted that were being made is, basically, the last line of the current ordinance. Section (E) was being changed, and then Section (F)

was the omission of restaurants. In Part (E), you say that "If no negative comment is received on the application from any property owner within 500 feet of the applicant's affected property, the Director may approve the application", and so on.

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What I would like to request that the Council possibly consider is, in their "Exclusions", that you would prohibit restaurants that are outside that 500-foot range, or maybe another, you know, denomination of feet that you would come up with that would be reasonable. My particular situation, I don't have outdoor areas where we hold receptions and have loud music. We don't have any residences, you know, within earshot or ability to throw debris. I know that's sometimes a concern for people around restaurants and fast food chains; that there's a lot garbage from the cups and paper bags, and things, that are served in. But I would like to request that you would consider that if, you know, a specified amount of feet from a residence, a business would not be required to have to apply for this permit. I'm one of those business people that hate to fill out all these permit forms that everybody's always complaining about, the permitting process, as being so

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cumbersome. If you've built up a particular business in an area where if you're not going to impact a residential area, it would be one less form we would have to fill out. I also wanted to ask if this permit that would be required, is it a one-time permit, or would it have to be done annually? It's just one time?

MR. LASSUS:

One time.

CHAIRMAN CHAMPAGNE:

Mr. Lassus?

MR. LASSUS:

This is a one-time permit.

MS. VIAL:

One-time permit? And I noticed in the existing ordinance there are penalties, usually, when you don't comply with applying for a permit. Is there any penalty for not -I'm just looking at will this rectify the situation for this particular residential area. What if businesses don't apply for it?

MR. LASSUS:

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Yeah. Yes, there is a penalty outlined in that subsection of the code. "Any person violating the provisions of this section will be punished by a fine of not more than $500, or"--

MS. VIAL:

But that's for Section 36 (C).

MR. LASSUS:

It's (D).

CHAIRMAN CHAMPAGNE:

(D).

MR. LASSUS:

Subsection (D).

MS. VIAL:

Okay, penalty--

CHAIRMAN CHAMPAGNE:

It's page 183 in this -Yeah.

MR. LASSUS:

Are you referring to "That penalty only affects Subsection (C)"?

MS. VIAL:

Yeah. So, I mean, the way it's written, we don't even have a penalty if nobody files for the application--

MR. LASSUS:

Well--

MS. VIAL:

- for the permit.

MR. LASSUS:

- the Code Enforcement section would take legal action to enforce it--

MS. VIAL:

Okay.

MR. LASSUS:

- through the courts.

MS. VIAL:

And then--

CHAIRMAN CHAMPAGNE:

Ms. Vial, thirty seconds.

MS. VIAL:

And then the only other thing is I just had a question, this is in general, it doesn't affect me, but the last statement of Section (E) says "Barrooms which are immediately adjacent to residentially-owned property shall not be eligible for application". What happens to existing barrooms that may be

adjacent to, will they be grandfathered in, or are they required to

comply with this ordinance?

MR. LASSUS:

They're not grandfathered in.

MS. VIAL:

They're not grandfathered?

MR. LASSUS:

Right.

MS. VIAL:

Okay, that's all I have. Thank you very much.

CHAIRMAN CHAMPAGNE:

Thank you. Anyone else wishing to comment on Summary No. 4405? Please state your name and address.

MR. HIMEL:

Ed Himel, 109 Murray Hill Drive. Mr. Huey told y'all what, mostly, was happening. I moved into St. Charles Parish because it was such a nice and quiet parish, and moved in this neighborhood. And now you cannot enjoy your afternoons, or your Sundays, or whatever, in your backyard, because the music's

so loud it's just like you being at a reception. You have to talk over everybody so you can have common

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communication. I'd ask y'all to please support this.

CHAIRMAN CHAMPAGNE:

Thank you. Anyone else wishing to comment on Summary No. 4405?

MR. WAGUESPACK:

James Waguespack, Sr., 134 Murray Hill Drive. I would appreciate you supporting this ordinance, also. There are times when you sit at your table, and glasses and stuff will float on your table, and noise vibrating it, that's how bad the noise is, and I think that is -there's something they can do for it.

CHAIRMAN CHAMPAGNE:

Thank you, Mr. Waguespack. Anyone else wishing to comment? We're here on Public Hearing Summary No. 4405.(NO RESPONSE)
Anyone wishing to comment, please step forward. Anyone wishing to comment on
Summary No. 4405?(NO RESPONSE)

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Public Hearing is closed. Any Council discussion? Mr. Ram?

MR. RAMCHANDRAN:

Mr. Lassus, the exemptions you have, when the Department turns it down, the application can go to the Council. What happens to the ZPA process?

MR. LASSUS:

This particular appeal process was decided upon by a council committee that Mr. Duhe headed in 1994, I believe, and there were a group of committee members that got together for a number of months and decided that this would be the best appeal process for this particular function in government.

MR. RAMCHANDRAN:

And since I talked to some of the residents in the neighborhood, almost uniformly they are not against any businesses. They want to make sure that - They like the restaurant. They want it to stay there and, at the same time, somehow manage the noise.

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MR. LASSUS:

Right. This wouldn't -This would allow this issue to come before the Council so that maybe some sort of ground rules could be laid for the business to operate that would be amenable to both sides. I think it's -it could work out for the best advantage of both, really.

MR. RAMCHANDRAN:

So, in this process, can you suggest to the businesses someone to

tone down the noise and give them the permit after public input? Is there a mechanism to do that, rather than going to the Council for everything? Can the Department work with the businesses and the neighborhood?

MR. LASSUS:

Right. We've attempted to work with this business to correct the situation, but it hasn't come to any--

MR. RAMCHANDRAN:

So you have the mechanism to do that?

MR. LASSUS:

No, we don't have the mechanism. We

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encourage the business to make some changes, but, apparently, that wasn't -That wasn't done.

MR. RAMCHANDRAN:

So the only recourse they have is to go for the public input and go to the Council; go through red-tape requirements.If that is so, can we, in any way, accommodate Ms. Dufrene's request that if a restaurant is located in a commercial area, or the new is coming up, they do not abut any residential area, to, say, 1,000 feet?
Is there a way they don't have to do unnecessary government application process?
Can we include under "Exclusions", Section
(F), "Prohibitions contained in this section

shall not apply to country clubs and restaurants which do not abut 1,000 feet from residential areas"? Is that a way you can accommodate her request?

MR. LASSUS:

That's an option that you could take to make an amendment to this ordinance.

MR. RAMCHANDRAN:

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So, in that case, Mr. Chairman, since I'm a out-and-out pro business person, I like to see minimum red tape in any application process, I make a motion to include under Section (F), "Exclusions", "Prohibitions contained in this section shall not apply to country clubs and restaurants which do not abut residential areas by 1,000 feet". I'd like to make that motion or an amendment to that statement.

CHAIRMAN CHAMPAGNE:

This is to Section 2?

MR. RAMCHANDRAN:

Section (F).

CHAIRMAN CHAMPAGNE:

Section 2 (F).

MR. RAMCHANDRAN:

Yeah, Section 2 (F).

CHAIRMAN CHAMPAGNE:

(F). State it again, please?

MR. RAMCHANDRAN:

"Prohibitions contained in this section shall not apply to country clubs and restaurants which do not abut residential

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areas by 1,000 feet".

CHAIRMAN CHAMPAGNE:

Shouldn't it include barrooms?

MR. RAMCHANDRAN:

No, barrooms are always excluded. It's only restaurants and country clubs. We do not know what is going to come up in the future. I do not like to subject them to unnecessary red tape.

CHAIRMAN CHAMPAGNE:

Do we have a second?

(NO RESPONSE)

Motion dies for lack of a second. Mr. Duhe has the floor.

MR. DUHE:

Thank you, Mr. Chairman. Okay, Mr. Lassus, I'd still like you to explain this time; how that's going to restrict the sound problem, the noise
problem, that they have in that area?

MR. LASSUS:

Well, essentially, when the -when this issue comes before the Council, this particular operation, you could put stipulations on the operation.

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(Addressing Mr. Lewis) Would you like to address it?

MR. LEWIS:

Mr. Duhe, if I may, they're not going to be able to serve alcohol in these places without a permit, so the likelihood that they're going to be having bands, and stuff, out there is greatly reduced. So that's the way you control these alcohol-related events, is by the alcohol. And that's what this ordinance that your committee passed and recommended was designed to do; was control the outdoor drinking. And that's what this is about; is control the outdoor drinking.

CHAIRMAN CHAMPAGNE:

Still Mr. Duhe.

MR. DUHE:

I understand what you're saying, but I think that you're still leaving an opening for someone to have just a little get-together and start up a band; you know, get a band to come there to start playing. It just still doesn't really address the noise problem.

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I understand about the serving alcohol. You don't have to serve alcohol to have a band playing there, you could just have a get-together, and it would create a nuisance. But I thought we could be more specific in addressing this, the noise problem, was my thought. Thank you.

CHAIRMAN CHAMPAGNE:

Mr. Tregre?

MR. TREGRE:

Yes. In response to Mr. Duhe, perhaps we can, and perhaps there may be a whole -But, generally, I think the basic reason for applying this to the barrooms, initially, is the fact you have, number one, have outdoor drinking, then you have outdoor parties that go with the drinking. And things tend to get out of hand, and, you know, we've had volleyball tournaments in some of these places where boom boxes, whatever, have been set up. This particular case, here, at this function, the reception is generally -I'm

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sure there are receptions without alcoholic beverages, but I'll bet

you 90% of them have it. Without that object of alcohol there, you probably won't have the music. But you're right. They could set up a band tomorrow and possibly start playing, and we may have to address this thing further on the sound ordinance. You know, we've worked real long and hard. We got a call from Mr. Long, some time ago, representing the residents of that area. Tried to find a way to get this thing put in place. Far as I'm concerned, you shouldn't be able to have a tent as part of a business place, okay? because there may be some problems with that, okay? But, you know, we have to try to find a way to work this thing out, and if this doesn't work or do the job, we're going to have to do something else, you know? And I think the fact that -The no-fee permit is probably going to be one sheet of paper that you fill out, and the majority of the work and the red tape is going to be done by the Code Enforcement

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people going out there and posting the property. I disagree with the motion that failed, that if you're in a commercial area more than 1,000 feet from residential this wouldn't apply, or you could have certain types of businesses that would be located there. You might could have a ceramic shop, with all your stuff falling off the shelves when the music's blasting. I mean, this thing could affect other commercial establishments, as well, and I think the rule needs to apply for all. We shouldn't show special privilege for this restaurant that's located here, or the one located over there. Let's apply it to all, you know. And I would ask that you support this ordinance. I think it's a step in the right direction. I think it's going to work. But if it doesn't, yes, maybe you'll have a little more work to do.

CHAIRMAN CHAMPAGNE:

Mr. Duhe? Anyone else has--

Mr. Phillips?

MR. PHILLIPS:

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I think this is, really, an evolution to where this is one of the situations where you crawl before you walk, and you take action to do what you can right now to rectify some of the situations that are out there. The 500-feet situation is, if I remember right and I'm correct, I believe that's one of the rules that are in the State alcohol permit application, in which if you're a church or if you're a school, you're not allowed to have barrooms, for instance, within 500 feet. So this, really, stays consistent with that. It just happens to be right now that you can't have a barroom within 500 feet of a church or school, but you can have one right now within 500 feet of a neighborhood. And this makes everything consistent, you know, if that helps to explain it.

CHAIRMAN CHAMPAGNE:

Mr. Johnson?

MR. JOHNSON:

Yes. Yeah, let's clarify something. On the 500 feet, the Parish did that before

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the State, because the State was 300. And the Parish did it back then and it was 500, which is all okay. But what I want to ask is not necessarily against this, but the whole deal is noise. Now, if you remember, we'd been trying to get a noise ordinance for a long time, and we finally got one. Why does that -Why is it that that doesn't work, does anybody know?

MR. LEWIS:

The reason it doesn't work is the noise ordinance that we have is very specific to the various -the location. And then the one we passed, it was, like, the State law that just got passed that is location specific, too, it applies to automobiles. So we're going to get around, I think maybe, Mr. Johnson, to a noise ordinance that will work in these instances, but as I told you before, they have to be very carefully tailored or they're found unconstitutional.

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So I think we crafted the one for the parks very carefully, very narrowly, and it will work, and I think, with some, that it may be close on this other one like the State has passed, but I think that one will eventually work, too. But one that would work in this instance would have to be crafted totally different. It would have to be what I would call a, or refer to as a property line noise ordinance, and would have to have some different enforcement provisions. And I could show you some that's been done, for instance, say, in New Jersey, or in places like that, but that haven't - that they have -they have very detailed instructions on how to enforce it, and the officers have to have these decibel counters, and those kinds of things. So I -We -The Sheriff's Office is not really crazy about getting into the decibel-counting business and that kind of thing, so we have to work around that

somehow, but we are still considering it.

MR. JOHNSON:

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Well, I hope you would. Now--

MR. LEWIS:

Now, I understand your--

MR. JOHNSON:

Right.

MR. LEWIS:

- trepidation about this. This is not, as Mr. Phillips said, a cure-all for it, but this is a step in the right direction. I don't know if you remember, but when this was -origi :ally came up, this ordinance here, I was against these exceptions, and this is one of the reasons that I was against these exceptions, because I felt like it would eventually lead to this problem. And it has, and now we're taking a step to correct part of the problem. I don't think the country clubs pose that kind of problem, because people move into areas with country clubs and they expect that kind of activity. I don't think the same can be true of restaurants and barrooms.

MR. JOHNSON:

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My only other--

CHAIRMAN CHAMPAGNE:

Mr. Johnson, your time's up. Any other Council discussion?

Mr. Duhe? Well, I'm sorry,

Mr. Alexander. First time.

MR. ALEXANDER:

Thank you, Mr. Chairman. If we approve this ordinance, we would remove restaurants from the exclusions. Would a restaurant then have to apply for an exception?

MR. LEWIS:

Correct.

MR. ALEXANDER:

Okay, and what happens in this exception process if the restaurant is given an exception, and then what recourse do the people have if they to challenge that exception?

MR. LEWIS:

I don't think that once the process is followed, and the Council, or, in fact, if the Council grants them an exception--

MR. ALEXANDER:

No, no, no, no, no, the exception is granted by--

CHAIRMAN CHAMPAGNE:

By the director, yeah.

MR. ALEXANDER:

- Planning and Zoning.

CHAIRMAN CHAMPAGNE:

The Council only takes it up if it has objection.
MR. LASSUS:

The permit would be granted by either the Planning and Zoning director, or through the Council. It would be a permit. So once they get the permit, they're--

MR. ALEXANDER:

Okay, if you -If you give them the exception, if you grant, let's say, this particular establishment an exception, what recourse do the people have now, if they're still annoyed?

MR. LASSUS:

If the Planning director grants, they could appeal according to this provision.

MR. ALEXANDER:

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Okay, I thought that this provision only said that if the exception was denied then the restaurant could appeal.

MR. LASSUS:

Yeah, if it's de -I thought that's what you meant.

MR. ALEXANDER:

Not the restaurant, I'm talking about the neighbors. What if you give them an exception to a restaurant and the neighbors are unhappy, what recourse do the neighbors have?

MR. LASSUS:

Well, they to notify us during the posting.

MR. ALEXANDER:

What if they don't? What if they don't?

MR. LASSUS:

Well, then, it's permitted. They've had their opportunity, according to the code, to make an appeal or to make comment, and they need to take that opportunity, at that time, to do that.

MR. ALEXANDER:

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M'mm-h'mm. That's all I have.

CHAIRMAN CHAMPAGNE:

Anyone else wishing to speak, first time?
Mr. Duhe, again.

MR. DUHE:

Yeah, Mr. Lewis, one quick question. Wouldn't that reception activity be considered disturbing the peace, and couldn't the Sheriff's Office act on that?

MR. LEWIS:

It may be.

MR. DUHE:

Okay, and also--

MR. LEWIS:

Not necessarily. It may be, though.

MR. DUHE:

How would it affect swim clubs that have little pool parties? Not country club, just swim clubs. Would that affect them?

MR. LEWIS:

It might affect them if they're drinking alcohol, but they could apply for a permit, also.

MR. DUHE:

Okay.

MR. JOHNSON:

It only says "barrooms". The exception says--

MR. LEWIS:

The only one that's prohibited is barrooms.

CHAIRMAN CHAMPAGNE:

Mr. Johnson, you had something else?

(NO RESPONSE)

Anyone else wishing to comment?

Council discussion?

(NO RESPONSE)

Please cast your votes.

(COUNCIL VOTES)

CHAIRMAN CHAMPAGNE:
The Summary 4405 carries.

Mr. Ramchandran, Mr. Johnson, Mr. Alexander, Mr. Phillips, Mr. Duhe, Mr. Minnich voting yes. Mr Authement is absent. Mr. Sirmon, I didn't cast your vote.

MR. SIRMON:

My brother own The Cajuns, so I'm abstaining from the vote.

CHAIRMAN CHAMPAGNE:

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And I am, also, abstaining because I own a restaurant, but it's really not affected by this.

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